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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 136 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKBHAI SANKALESHWAR TRIVEDI

Versus

SANJAYBHAI BABUBHAI PATEL

Appearance:

1. Appeal from Order No. 136 of 2003

MR DIPAK R DAVE for Appellant No.

MR BHARAT R PANDYA for Respondent No. 1,2,5-7-4

MS TRUSHA K PATEL for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/06/2004

ORAL JUDGEMENT

This Appeal from Order is filed against an order passed below Ex.6 in Special Civil Suit No.226/2002 dated 31/01/03. Application 6 was filed for interim relief, wherein the Court had initially passed an order on

25/11/02, issuing 'Notice to show cause', returnable on 30/11/02.

2. The case of the plaintiff is that, the plaintiff had executed a Power of Attorney on 28/03/91 in favour of defendant no.1 (Sanjay Babubhai Patel). According to the plaintiff the said Power of Attorney was for limited purpose that is, for getting the land in question converted from new tenure to old tenure; that the defendant no.1 has sold that land, though he was not authorized for the same, in favour of defendants no.2 to 4. The plaintiff has therefore filed the suit for declaration to the effect that defendant no.1 did not have any power to sell the land in favour of defendants no.2 to 4; that the sale deeds executed in favour of defendants no.2 to 4 by defendant no.1 be cancelled and a permanent injunction be issued against defendant no.1, restraining him from dealing with the property in question in any manner whatsoever.

3. The learned Judge, after taking into consideration the rival contentions of both the sides, has recorded convincing reasons in paragraphs 8 and 9 of its order for not allowing the application for injunction. The grounds / reasons recorded by the learned Judge are considered by this Court and the same are found acceptable on all counts. The ground which has weighed with the learned Judge is that though the plaintiff has based his claim on a Power of Attorney, which according to the plaintiff was executed on 28/03/91, is not produced by the plaintiff till date. Even at this late stage, a copy of the said Power of Attorney dated 28/03/91 is not made available to this Court for perusal. It is also recorded by the learned Judge that the plaintiff is not able to establish his case; that, the Power of Attorney was executed by the plaintiff in favour of defendant no.1, only for limited purpose. The plaintiff has though produced a copy of the reply given by 'H.Desai & Company' to the objections filed by the plaintiff, through his advocate, to a public notice given by the defendant no.1, from which it transpires that the plaintiff Rasikbhai Sankaleshwar Trivedi along with six other persons had executed a Power of Attorney on a stamp paper of Rs.70/- on 28/03/95 before Notary Shri J G Gunatit and that it is in pursuant to that Power of Attorney that the defendant no.1 executed the sale deed. The plaintiff has not mentioned these facts in the plaint. Not only that, in the said Notice, though the names of all the persons in whose favour the sale deeds are executed are mentioned, the plaintiff has chosen not to join all of them as party

defendants. The plaintiff has not controverted the contents of the written statements filed by the defendants on 02/05/03. More than a year has passed by now but the plaintiff has neither controverted the contents of the written statement nor substantiated his case by producing any cogent and convincing evidence.

4. The learned Judge has also recorded that the suit is filed, only for the cancellation of the sale deeds executed by defendant no.1 and despite the fact of execution of Power of Attorney on 28/03/95 is in the knowledge of the plaintiff, the plaintiff has not prayed for declaring the said Power of Attorney as non est.

5. Mr.Pandya learned advocate appearing for the opponents herein, who have filed Civil Application No.2906/04 for vacating the interim relief, has produced the details of the dates on which the proceedings in the Court below were adjourned from time to time, majority of which are at the instance of the appellants, on applications being made by the learned advocate appearing for the plaintiff. Mr.Pandya submitted that the suit is filed with a sole purpose of harassing the defendants. He submitted that, that is why the plaintiff, after having obtained an interim relief before this Court, has deliberately not cooperated in proceeding with the hearing of the suit. On the contrary, all attempts are made to delay the hearing of the suit. This Court finds substance in the submissions of Mr.Pandya and is of the opinion that the plaintiff who filed the suit on 25/11/02 was in know of the reply of 'H.Desai & Company' dated 21/10/02 and still chose to file the suit without joining all the persons in whose favour the sale deeds are executed. Not only that the plaintiff has also not produced the 'Power of Attorney', which according to the plaintiff, was executed on 28/03/91 on which the plaintiff has based his case. Thus, the document on which the entire case is based by the plaintiff is kept back by the plaintiff for the reasons best known to him. From the aforesaid discussion, this Court has reason to believe that the present proceedings are not bonafide proceedings. However, without commenting any further on the same, this Appeal from Order is dismissed and the interim relief granted by this Court is vacated.

6. It will be open to the parties to pursue the suit before the learned trial Judge, which shall decide the same, without being influenced by any of the observations made herein. The Civil Application for vacating interim relief does not survive in view of the order passed in the Appeal from Order.

(Ravi R. Tripathi, J.)

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